

**MINUTES
of the
FIFTH MEETING
of the
NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE**

**November 9, 2010
Room 307, State Capitol
Santa Fe, New Mexico**

The fifth meeting of the New Mexico Finance Authority (NMFA) Oversight Committee was called to order by Senator Mary Kay Papen, chair, on November 9, 2010 at 9:10 a.m. in Room 307 of the State Capitol in Santa Fe, New Mexico.

Present

Sen. Mary Kay Papen, Chair
Rep. Patricia A. Lundstrom, Vice Chair
Sen. Sue Wilson Beffort
Rep. Anna M. Crook
Rep. Brian F. Egolf, Jr.
Sen. Stephen H. Fischmann
Rep. Roberto "Bobby" J. Gonzales
Rep. Jane E. Powdrell-Culbert
Rep. Benjamin H. Rodefer
Rep. Henry Kiki Saavedra
Rep. James R.J. Strickler
Sen. David Ulibarri
Rep. James P. White

Advisory Members

Rep. Janice E. Arnold-Jones
Rep. Ernest H. Chavez
Sen. Dianna J. Duran
Rep. Candy Spence Ezzell
Sen. Timothy M. Keller
Rep. Ben Lujan
Sen. Richard C. Martinez
Rep. Andy Nuñez
Rep. Edward C. Sandoval
Rep. Sheryl Williams Stapleton
Rep. Luciano "Lucky" Varela

Absent

Sen. Kent L. Cravens
Sen. Tim Eichenberg
Sen. Clinton D. Harden, Jr.
Rep. Dona G. Irwin
Sen. George K. Munoz
Sen. Nancy Rodriguez
Rep. Richard D. Vigil

Rep. Elias Barela
Rep. José A. Campos
Rep. Mary Helen Garcia
Sen. Mary Jane M. Garcia
Rep. Thomas A. Garcia
Sen. Stuart Ingle
Rep. W. Ken Martinez
Sen. John M. Sapien
Rep. Thomas C. Taylor

Staff

Doris Faust, Legislative Council Service (LCS)
Tom Pollard, LCS

Claudia Armijo, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file and posted on the New Mexico Legislature web site.

Tuesday, November 9

Senator Papen welcomed the members and reminded them that the meeting was being audio-webcast. Consequently, she asked them to keep sidebar conversations to a minimum and to turn their microphones on and off before and after speaking. She also asked the members to identify themselves before speaking into their microphones.

House Memorial 9 Report on Transportation Issues

Gary Giron, secretary of the New Mexico Department of Transportation (NMDOT), Max Valerio, deputy secretary for programs and infrastructure for the NMDOT, and Patricia Oliver-Wright, manager of the statewide planning section for the NMDOT, presented to the committee on the status of the department's work related to several house memorials.

Ms. Oliver-Wright reminded the members that House Memorial 35 was passed during the 2007 legislative session. The memorial provided for the NMDOT to form the Transportation Technical Committee to review sustainable funding for New Mexico's transportation system. Ms. Oliver-Wright noted that several other states have completed similar studies, which were due to the rising costs of construction, a backlog of transportation needs and a lack of federal funds. The membership of the Transportation Technical Committee was designated by the governor and includes the regional planning organizations, the metropolitan planning organizations, the State Transportation Commission, the NMDOT executive staff and the New Mexico Passenger Transportation Association.

Ms. Oliver-Wright also reminded the members that the purpose of House Memorial 35 was to:

- 1) identify and capture the future outlook of transportation in New Mexico;
- 2) review and identify the state's current and future transportation needs;
- 3) review alternative modes of transportation and innovative funding options;
- 4) identify options in funding strategies for a sustainable transportation system; and
- 5) deliver a report on the future outlook of transportation to the governor and legislature by October 15, 2007.

The Transportation Technical Committee worked during a six-month period, holding

eight meetings and issuing its final report in October 2007. The report contained options to increase revenues using new and redirected revenue sources. Short-term funding options identified by the committee included:

- 1) implementing a statewide transportation-dedicated gross receipts tax (GRT) of \$.25 applicable to all GRT;
- 2) adding a statewide 5% GRT to retail sales of gasoline;
- 3) adding a 5% statewide GRT on special fuels retail sales;
- 4) increasing the annual vehicle registration fees with an average maintenance surcharge of \$69.00 per vehicle and possibly indexing the fee at 3% to 6% annually;
- 5) allowing a local dedicated GRT of \$.25 or \$.50 on regional GRT;
- 6) indexing the special fuels tax, allowing an annual increase of 3% and 6%;
- 7) indexing the gasoline tax, allowing an annual increase of 3% and 6%;
- 8) indexing vehicle registration and transaction fees, allowing an annual increase of 3% and 6% respectively; and
- 9) indexing the weight distance tax and trip tax, allowing an annual increase of 3% and 6% respectively.

Next, Ms. Oliver-Wright told the members that House Memorial 5, passed in the 2009 legislative session, continued the work of House Memorial 35. The Transportation Technical Committee's work involved updating revenue statistics, studying the relationship between economic development and transportation and estimating the state's transportation needs. Ms. Oliver-Wright told the committee that as a consequence of House Memorial 9, which was passed in the 2010 legislative session, the NMDOT conducted a public opinion poll to gauge support for possible transportation tax increases. Additionally, the Transportation Technical Committee developed an educational campaign on the importance of transportation. As a consequence of the work associated with the objectives of House Memorial 9, additional revenue sources for the State Road Fund were identified as:

- 1) increasing the gasoline tax by \$.10 per gallon, which could raise \$84 million annually;
- 2) increasing the special fuels tax by \$.10 annually, which could raise \$42 million annually; and
- 3) improving the enforcement of the weight distance tax, which could raise \$14 million annually.

The NMDOT estimates that these three revenue-increasing mechanisms would generate revenues of \$243 million annually. Mr. Valerio noted that the NMDOT and the Taxation and Revenue Department are continually looking for ways to improve the weight distance tax enforcement.

Mr. Valerio advised the members that in September 2010, a public opinion poll was conducted by Research and Polling, Inc. Mr. Valerio explained that the poll was implemented in an effort to:

- 1) determine whether the general public has an understanding of the transportation needs of the state;
- 2) assess the public's perceptions regarding transportation issues;
- 3) measure support for increasing taxes on gasoline; and
- 4) test messages in the survey related to transportation in New Mexico as a basis for the educational campaign.

Funding for the poll was derived from the combined sources of five entities, including:

- 1) the American Council of Engineering Companies;
- 2) the Mid-Region Council of Governments;
- 3) the New Mexico Association of Counties;
- 4) the NMDOT; and
- 5) the Associated Contractors of New Mexico.

Participants in the poll were asked, among other things, whether New Mexico's roads were in good condition and whether there was a need to sustain New Mexico's road system. Mr. Valerio explained that the outcome of the poll reflects a snapshot of the current political and economic climate, indicating that the public is "in the middle" regarding transportation issues and is not supportive of new tax initiatives.

Additionally, Mr. Valerio reported that results of the poll indicate that the public remains concerned regarding the lack of good jobs, the weak economy, New Mexico's poor educational system, crime, illegal drug use and unreasonable taxes. About 6% of those asked declined to comment. The overall approval rating given by those polled regarding the NMDOT's job performance in addressing New Mexico's transportation needs was 43%. He cited a 62% positive outcome when participants were asked if transportation funding should be increased.

Mr. Valerio noted that although there was not public support for tax increases as a means to provide transportation funding in the state, there was limited support of 32% of people polled for an increase of 0.25% to the statewide GRT on gasoline sales.

Some committee members inquired as to how much this tax increase might generate per year. Ms. Oliver-Wright said she would provide that information for the members. Members also asked if such a tax could and would be specifically earmarked for transportation, to which Ms. Oliver-Wright responded that this would be the goal.

Next, Ms. Oliver-Wright told the members of the committee that residents in the mid-region counties of Bernalillo, Sandoval, Valencia and Torrance were asked about support for the funding of specific projects. The questions posed involved two categories:

- 1) road improvement packages, including the Paseo Del Norte/I-25 interchange, major roadways on the west side of Albuquerque and an additional river crossing in Valencia County;

and

2) public transportation improvements, including bus rapid transit service in Albuquerque and increased bicycle pedestrian access to transit stations.

Ms. Oliver-Wright reported the results of the polling, saying that when people knew the benefits such projects would make in their communities, the support for the projects was fairly high at about 55% in favor. However, when specific tax increases were mentioned, the support dropped sharply to 39% in favor.

Other results of the survey included that 73% of those asked responded that safety was the most compelling reason for increased transportation funding. Business growth and economic development as a reason for increased funding received a 64% approval, and improvements to public transportation garnered a 55% approval rate.

Ms. Oliver-Wright noted that as a result of the educational outreach, about 10% of those polled changed their views in support of transportation funding increases.

Members voiced concerns that all of the potential funding sources identified by the Transportation Technical Committee for the state's transportation needs involve tax increases. When asked whether the NMDOT is advocating tax increases, Secretary Giron said the department is not taking a position on tax increases. Rather, the NMDOT is fulfilling the legislators' requests as outlined in the house memorials referred to during the NMDOT's presentation.

Secretary Giron responded to questions by legislators regarding the state's various transportation districts' budgets. He noted that districts that do not expend all of their budgetary funds are not penalized, nor are a district's excess funds transferred to another district. Additionally, Secretary Giron explained that the NMDOT has an annual budget of \$800 million. Half of those funds are provided from the state, and half of those funds are from the federal government. He added that federal funds may be used for construction but not maintenance.

With regard to New Mexico's ports of entry, Secretary Giron said that the NMDOT does not have the money to maintain physical staffing at the ports 24 hours a day. Consequently, he noted that the department is looking at increased electronic capabilities, including electronic license plate readers.

Members noted that the number-one priority at a local level is road maintenance. When asked how the NMDOT prioritizes the funding of projects, Secretary Giron said the NMDOT collaborates with senior leadership and district engineers. He added that the focus is always first on safety and preserving the state's existing infrastructure. He also explained that federal funding is in short supply and will likely continue to be in the near future.

The discussion turned to the topic of the Rail Runner. Members asked many questions

regarding the operations and costs associated with the operations. Some members asked how much funding the NMDOT expends for the Rail Runner. Additionally, members inquired as to the revenues generated by the Rail Runner. When asked for information regarding the amount of the contract between the state and the company that operates the Rail Runner, Mr. Valerio said he could provide the information for the members.

Prior to the next presentation, Senator Papen asked for a motion to approve the minutes from the October meeting of the NMFA. A motion was made and seconded, and the minutes were unanimously approved.

NMFA Proposed Legislation

Matthew Jaramillo, director of government affairs for the NMFA, addressed the members regarding proposed legislation for the 2011 legislative session. Mr. Jaramillo began by telling the members that the NMFA is seeking to introduce five bills. Three of the bills the NMFA is hoping to introduce are authorizations. They include:

1) a bill authorizing the NMFA to make loans for public projects from the Public Project Revolving Fund (PPRF). This bill is not ready, and the NMFA will be providing specific provisions for the bill to the LCS staff;

2) a bill authorizing the NMFA to make loans from the Economic Development Revolving Fund for projects that benefit various New Mexico counties. Mr. Jaramillo noted that the Economic Development Department will be finalizing the project list prior to the NMFA's December interim committee meeting; and

3) a bill authorizing the NMFA to make loans or provide grants from the Water Project Fund and Acequia Project Fund to community water organizations, acequias, cities and counties for various water system improvements such as storage, conveyance and delivery, treatment recycling, conservation and restoration. Mr. Jaramillo noted that since the Water Trust Board is not scheduled to meet until December 15, 2010, the NMFA will provide the NMFA Oversight Committee with a list of the projects approved by the board.

Next, Mr. Jaramillo told the members that the NMFA will be seeking a bill requesting an appropriation of \$2 million from the PPRF to the Drinking Water State Revolving Loan Fund for expenditure in fiscal year 2011 and subsequent years. He noted that the appropriation would provide the state matching funds for the federal Safe Drinking Water Act of 1974 projects and to carry out the provisions of the Drinking Water State Revolving Loan Fund Act.

Mr. Jaramillo told the members that the NMFA is seeking to introduce a bill amending the definitions section of the Water Project Finance Act to include additional types of entities eligible to apply for funds. The types of entities that the NMFA hopes to add to the definitions section include regional or local public water utility authorities, inter-community water or natural gas supply associations or corporations organized pursuant to Chapter 3, Article 28 NMSA 1978,

including water or natural gas associations and associations of "qualified entities" created pursuant to the Joint Powers Agreement Act or other authorizing legislation for the exercise of their common powers.

Mr. Jaramillo directed the members' attention to a handout that provides information regarding the PPRF outstanding loan portfolio broken down by county. He told the members that the NMFA does not use a categorization process in granting loans. Rather, the NMFA grants loans according to its debt management policies. Mr. Jaramillo explained that for the purposes of the handout, the NMFA staff arbitrarily selected seven counties' PPRF loan information to include in the handout. He then provided a general overview of a variety of the listed projects.

Senator Papen requested Senator Fischmann, Representative Crook and Representative Gonzales to form a subcommittee to propose alternatives to the project authorization bill for the PPRF.

NMFA Reserve Fund, Contingent Liquidity Account, PPRF Transfers and Bond Rating

William Sisneros, chief executive officer, NMFA, spoke to the members regarding the issue of contributions to the state general fund from the PPRF. He provided a memorandum dated October 8, 2010 from Chip Pierce of Western Financial Group, LLC. In the memorandum, Mr. Pierce provided an analysis of the impact on the NMFA's bond rating that would occur if funds are legislatively pulled from the PPRF for purposes not contemplated when the PPRF was originally statutorily established versus funds being transferred to the state general fund on a one-time basis and at the direction of the NMFA board. Mr. Pierce opined that legislative action that "diminishes the financial resources of the PPRF would be viewed by the rating agencies as a significant precedent that could diminish the credit strength and lending capacity of the PPRF".

He additionally noted that one of the fundamental credit strengths of the PPRF and the NMFA is that lending decisions are based upon the credit-worthiness of applicants and are not influenced by non-credit-related factors. He further noted that legislative actions that would impose specific mandates or cash sweeps on the PPRF carry potential negative implications, including:

- 1) limiting the NMFA's flexibility and ability to respond to the capital needs of a broad range of New Mexico communities;
- 2) imperiling the NMFA's excellent credit ratings because the rating agencies would likely perceive such actions as a constraint on the NMFA's ability to adjust its practices to meet changing economic or financial dynamics; and
- 3) establishing a precedent that would be viewed with concern by the rating agencies, raising the possibility of future measures that could diminish the PPRF program's credit stability.

Mr. Pierce summarized his opinion that an isolated transfer of PPRF funds, based on a

decision made by the NMFA board, would be positively viewed by the rating agencies and therefore would not negatively affect the bond rating of the NMFA. However, legislative action that would statutorily divert PPRFs for specific project purposes could potentially negatively impact the NMFA's bond rating.

Mr. Sisneros explained that discussions with David Abbey, director of the Legislative Finance Committee (LFC), regarding the state's financial shortages prompted the NMFA board to consider transferring funds from the PPRF to the general fund. He noted that the NMFA board has requested an attorney general's opinion on the issue.

In addition to the memorandum from Mr. Pierce, Mr. Sisneros provided the committee members with copies of a memorandum addressed to Steve Flance, chair of the NMFA, and Senator Papen. The memorandum, dated November 9, 2010, was from Mr. Sisneros, Mr. Jaramillo and Mr. Pierce. In it, Mr. Sisneros and the others again define the issues regarding the transfer of PPRF funds to the state general fund. They advise that the NMFA is seeking the attorney general's opinion on the legalities of the proposed transfer. They additionally reiterate the concerns regarding the impact any legislative actions regarding the PPRF could have on the NMFA's bond rating.

Discussion regarding the NMFA board's preliminary decision to transfer PPRF funds to the state general fund ensued. Members expressed serious concern over the issue and specifically noted that the NMFA Oversight Committee members first learned of the possible transfer of funds through the LFC newsletter. Members told Mr. Sisneros that the members of the NMFA Oversight Committee need to be kept "in the loop" regarding such important matters as the transfer of funds from the PPRF.

Members also offered caution to Mr. Sisneros and the NMFA board regarding their reliance on the bond ratings. Some members noted that the rating agencies have been perceived as part of the problem in the recent financial meltdown.

Proposed Legislation for the Field Enforcement Inspection of Commercial Vehicles

Major Ron S. Cordova from the Motor Transportation Division of the Department of Public Safety (DPS) spoke to the members regarding legislative initiatives for the 2011 legislative session. Major Cordova advised the members that the DPS is seeking a statutory change to provide the Motor Transportation Division the authority to conduct roadside inspections. Major Cordova explained that court cases involving evidence retrieved during roadside inspections in New Mexico are being thrown out on the basis that the inspections were conducted in violation of the statute. As a consequence, the DPS is seeking legislative action to prevent problems with future court cases.

Proposed Community Development Financial Institution Legislation

Senator Keller presented proposed legislation that he intends to carry during the 2011 legislative session. The bill would authorize the NMFA to seek certification to be a community

development financial institution (CDFI). CDFIs lend money to businesses, social enterprises and individuals who struggle to get financial help from high street banks and loan companies. CDFIs help deprived communities by offering loans and support at an affordable rate to people who cannot access credit elsewhere.

CDFIs are entities certified by the United States Department of the Treasury. The department administers the CDFI Fund through its various programs. The CDFI Fund enables locally based organizations to further goals such as economic development, including job creation, business development and commercial real estate development; affordable housing; and community development financial services, including providing basic banking services to underserved communities and financial literacy training.

When asked how many CDFIs are currently located in New Mexico, Senator Keller told the members that there are 10. He noted that there are a total of 800 in the nation. When asked how transactions between the CDFI and the tribes would work, Senator Keller explained that limited waivers of sovereignty would be needed for transactions with the various Indian tribes and pueblos.

One of the disadvantages associated with the CDFI program is the amount of paperwork and bureaucracy associated with the implementation and operation of federally funded programs. A benefit of the proposed legislation was also noted. If the NMFA becomes a CDFI, it can make loans directly, and it can also give funding directly to other CDFIs. The benefit of that is more flexibility in lending and the access to federal dollars for projects in underserved communities. Mr. Sisneros noted that in New Mexico, the existing CDFIs have a history of working well together.

There was general support among the members for the concept of the proposed legislation. Some members asked if this type of lending entity would be competing with private lending institutions in the state. Senator Keller and Mr. Sisneros advised that CDFIs serve a unique purpose and generally provide funding solutions to those individuals incapable of acquiring funding from traditional sources.

With no further committee business, the meeting was adjourned at 3:45 p.m.